

U.S. COURTS
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Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation

REPLY IN SUPPORT OF THIRD-PARTY PLAINTIFF INTERDENT SERVICE CORPORATION'S RULE 12 MOTIONS AGAINST THIRD-PARTY DEFENDANTS ROMRIELLS', ORMOND'S AND GOODLIFFE'S COUNTERCLAIM - 1

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY R. MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Third-Party Defendants.

In opposition to defendant/third-party plaintiff InterDent Service Corporation's ("ISC") Rule 12 motions against third-party defendants Dwight G. Romriell's, Gregory Romriell's, Errol Ormond's and Arnold Goodliffe's (the "Romriell defendants") counterclaims, the Romriell defendants do not dispute the central proposition of ISC's motion: that because they are merely employees or shareholders of plaintiff Pocatello Dental Group ("PDG"), they have no standing to assert that ISC breached its Management Agreement with PDG. Nor do the Romriell defendants dispute that they have failed to plead a legal theory under which they might be able to complain about alleged breaches of contract between their employer and a third party. *Even in their opposition memorandum, the Romriell defendants refuse to come forward with a legal theory.* This can only be seen as a concession that there is no legal theory or principle giving them standing to complain about ISC's alleged breaches of the Management Agreement or creating any duty on the part of ISC toward the Romriell defendants. *See Glenn K. Jackson Inc. v. Rue*, 273 F.3d 1192, 1202 n. 4 (9th Cir 2001) (shareholder/employee of law firm has no standing); *Jordan v. Hunter*, 124 Idaho 899, 904, 865 P.2d 990 (Idaho App. 1993) (shareholder has no claim for breach of fiduciary duty to corporation).

Instead, taking advantage of the convenience of the word processor, the Romriell defendants merely repeat in redundant detail the factual contentions they made in pending the

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TRO proceedings without any attempt to meet ISC's arguments. In the TRO proceedings, ISC demonstrated that these contentions are pretextual—that they are part of a scheme for the Romriell defendants to try to evade their noncompete agreements.¹ However, for the purpose of this motion the point is that however many additional pages the Romriell defendants dump into the record about ISC's alleged breaches of the Management Agreement, this does not give them standing nor create any duty toward them on ISC's part to refrain from taking such actions. Only PDG has standing to debate which party, ISC or PDG, is in breach of the Management Agreement. PDG's employees and shareholders do not.

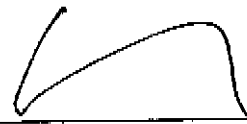
The Romriell defendants' counterclaims should be dismissed pursuant to Rule 12(b)(6). Failing that, the Romriell defendants should be required to plead facts and a legal theory explaining how they could possibly have standing to complain about a third party's alleged breach of contract with their employer.

I. CONCLUSION

ISC's Rule 12 motions should be granted.

DATED: July 26, 2004.

STOEL RIVES LLP



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¹ Affidavit of Kevin Webb in Support of Defendant/Third-Party Plaintiff's Motion for Temporary Restraining Order (Misner Noncompete), Ex. 3.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **REPLY IN SUPPORT OF THIRD-PARTY PLAINTIFF INTERDENT SERVICE CORPORATION'S RULE 12 MOTIONS AGAINST THIRD-PARTY DEFENDANTS ROMRIELLS' ORMOND'S AND GOODLIFFE'S COUNTERCLAIM** on the following named persons on the date indicated below by

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery

to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

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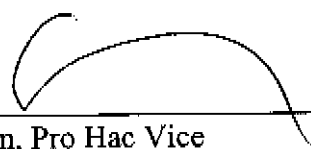
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